

Flint Hills Express, Inc.; and 21st Century Express, Inc., Alter Ego to or Successor of Flint Hills Express, Inc.; and Robert D. Ward and Carol M. Ward, Individuals and Randall Melching and Julie Nelson. Cases 17-CA-13941 and 7-CA-14076

May 26, 1992

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On August 1, 1989, the National Labor Relations Board adopted, in the absence of exceptions, the decision of an administrative law judge ordering Respondent Flint Hills Express, Inc. to make whole certain discriminatees for losses resulting from the Respondent's unfair labor practices. On March 22, 1990, the United States Court of Appeals for the Tenth Circuit entered a judgment¹ enforcing the Board's Order.

A controversy having thereafter arisen over the amount of backpay due the discriminatees under the terms of the Order, on May 15, 1990, the Regional Director issued and duly served on Respondent Flint Hills a compliance specification and notice of hearing, alleging the amount of backpay due and notifying the Respondent that it must file a timely answer. The Respondent failed to file an answer to the compliance specification. Accordingly, on August 6, 1990, the Board issued a Decision and Order granting the General Counsel's Motion for Summary Judgment and ordering the Respondent to pay the amounts set forth in the specification.² On July 2, 1991, the United States Court of Appeals for the Tenth Circuit issued a supplemental judgment³ enforcing the Board's Decision and Order.

A controversy having arisen over the enterprises and individuals liable to remedy the Board's Order as set forth in the Board's Decision and Order, on March 13, 1992, the Regional Director for Region 17 issued and duly served on Respondents Flint Hill; 21st Century Express, Inc., alleged alter ego to or successor of Flint Hills; and Robert D. Ward and Carol M. Ward, individuals, a second compliance specification and notice of hearing alleging their liability to remedy the Board's Order and notifying them that they must file a timely answer.

By letter dated April 10, 1992, counsel for the General Counsel notified the Respondents that no answer had been received and that if an answer

was not received by April 17, 1992, a Motion for Summary Judgment would be filed with the Board. The Respondents failed to file an answer.

On April 23, 1992, the General Counsel filed with the Board a Motion to Transfer Proceeding to the Board and for Summary Judgment, with exhibits attached. On April 27, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion and in the second compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the second compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the second compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment.

FINDINGS OF FACT

I. JURISDICTION

At all times material, until about January 11, 1989, Respondent Flint Hills was a corporation owned by Robert D. Ward and Carol M. Ward, husband and wife, each as 50-percent shareholders, and was engaged in the interstate and intrastate transportation of freight and commodities by trucks from a facility located at 1515 North Washington, Wichita, Kansas (the facility). At all times material, since about the same date, Respondent 21st Century, a corporation solely owned by Carol M. Ward, with an office and place of business located at the

¹ Docket No. 89-9561.

² 299 NLRB No. 48.

³ Docket No. 91-9538.

facility, has been engaged in intrastate and interstate transportation of freight.

During the period since January 11, 1989, Respondent 21st Century, in conducting its business operations within the State of Kansas, annually derived gross revenues in excess of \$50,000 for the transportation of freight in interstate commerce under arrangements with and as agent for various customers and common carriers, including Becker Corporation, C & M Cartage, Inc., and United Petroleum Transport, each of which operates between various States of the United States. Based on these operations, Respondent 21st Century functions as an essential link in the transportation of freight in interstate commerce. We find that at all times material Respondent 21st Century has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. RESPONDENTS' LIABILITY

About January 11, 1989, Respondent 21st Century was established by Robert D. Ward and Carol M. Ward as a subordinate instrument to and a disguised continuation of Respondent Flint Hills.

At all times material, Respondent Flint Hills and Respondent 21st Century have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single integrated business enterprises.

Based on this conduct, Respondent 21st and Respondent Flint Hills are, and have been at all material times, alter egos and a single employer.

In the alternative, about January 11, 1989, Respondent 21st Century purchased the business of Respondent Flint Hills, and since then has continued to operate the business of Respondent Flint Hills in basically unchanged form.

Before engaging in this conduct, Respondent 21st Century was put on notice of Respondent Flint Hills' potential liability in the instant Board cases by the participation of Robert D. Ward in the unfair labor practice hearing or the investigation of the complaint in the cases.

Based on this conduct, Respondent 21st Century has continued the employing entity with notice of Respondent Flint Hills' actual liability to remedy its unfair labor practices, and is a successor to Respondent Flint Hills.

By the acts and conduct described above, Robert D. Ward and Carol M. Ward aided, abetted, and

assisted in establishing Respondent 21st Century as a subordinate instrument to and a disguised continuation of Respondent Flint Hills to evade Respondent Flint Hills' potential liability in the instant cases.

Since about May 1983, Robert D. Ward and Carol M. Ward have failed to observe the corporate formalities with respect to Respondent Flint Hills and have intermingled their individual affairs with the corporate affairs of Respondent Flint Hills.

Since about January 11, 1989, Robert D. Ward and Carol M. Ward have failed to observe corporate formalities with respect to Respondent 21st Century and have intermingled their individual affairs with the corporate affairs of Respondent 21st Century.

By this conduct, Robert D. Ward and Carol M. Ward are individually liable to remedy the unfair labor practices of Respondent Flint Hills.

CONCLUSIONS OF LAW

1. Respondent Flint Hills and Respondent 21st Century are alter egos and a single integrated enterprise.

2. Alternatively, Respondent 21st Century is a successor to Respondent Flint Hills with notice of Respondent Flint Hills' actual liability to remedy its unfair labor practices.

3. Robert D. Ward and Carol M. Ward are individually liable to remedy the unfair labor practices of Respondent Flint Hills.

ORDER

The National Labor Relations Board orders that Respondents Flint Hills Express, Inc.; 21st Century Express, Inc.; and Robert D. Ward and Carol M. Ward, Wichita, Kansas, their officers, agents, successors and assigns, shall make whole each of the discriminatees named below by payment to them of the amounts set forth adjacent to their names, plus interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and accrued to the date of payment, minus tax withholdings required by Federal and state law:

Randall Melching	\$1,812
Harold Burns	189
Fred Thomas	1,886
Ron Herman	1,371
Robert Thurman	2,778
John Munkers	371
Julie Nelson	4,650